



02 MAR 2007

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In re Application of	:	
STROBEL, et al.	:	DECISION ON PETITIONS
U.S. Application No.: 10/531,201	:	
PCT No.: PCT/EP03/11347	:	UNDER 37 CFR 1.497(d)
Int. Filing Date: 14 October 2003	:	
Priority Date: 14 October 2002	:	AND 37 CFR 1.137(b)
Atty Docket No.: 60680-2030	:	
For: ELECTROCHEMICAL SYSTEM	:	

This decision is in response to applicant's "Response to Decision on Petition" filed 02 January 2007 in the United States Patent and Trademark Office (USPTO).

### **BACKGROUND**

On 02 November 2006, applicant was mailed a decision holding in abeyance a decision on applicant's petitions under 37 CFR 1.137(b) and 37 CFR 1.497(d) pending clarification as to the status of Bernd Gaugler. Applicant was afforded two months to file any request for reconsideration and advised that this period could be extended pursuant to 37 CFR 1.136(a).

On 02 January 2007, applicant filed the present renewed petitions.

### **DISCUSSION**

Applicant has presently provided proof, which has been confirmed by the International Bureau (IB), that notwithstanding the published international application, Bernd Gaugler is indeed an applicant/inventor for the present application. The IB has advised the USPTO that the international application will be republished. As Mr. Gaugler's status has been confirmed it is appropriate to consider the petitions initially filed 07 August 2006.

#### **I. Petition Under 37 CFR 1.137(b)**

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

Applicant's petition satisfies items (1)-(3) and item (4) does not apply. Specifically, applicant has provided payment of the appropriate petition fee, provided an explanation as to the unintentional nature of the delay in filing a response to the Form PCT/DO/EO/916 and provided a proper response in the form of the petition under 37 CFR 1.497(d) discussed below. As such, it is proper to grant applicant's petition under 37 CFR 1.137(b) at this time.

## **II. Petition Under 37 CFR 1.497(d)**

37 CFR 1.497(d) [formally, 37 CFR 1.48] states in part: "If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application....applicant must submit:

- (1) a statement from each person being added or deleted as an inventor that the error in inventorship occurred without any deceptive intention on his or her part;
- (2) the fee set forth in 37 CFR 1.17(h); and
- (3) if an assignment has been executed by any of the original named inventors, the written consent of the assignee in compliance with 37 CFR 3.73(b); and
- (4) any new oath or declaration required by paragraph (f) of this section.

Applicant has satisfied items (1), (2) and (4).

Regarding item (3), while applicant has submitted a statement under 37 CFR 3.73(b) establishing the right of the assignee to take action executed by an officer of the corporation, applicant has not provided a signed statement from the assignee consenting to the addition of Johann Waldvogel as an inventor in the application. As such, it is not possible to grant applicant's request under 37 CFR 1.497(d) at this time.

## **CONCLUSION**

For the reasons above, applicant's petition to revive the application pursuant to 37 CFR 1.137(b) is **GRANTED**.

For the reasons above, applicant's request under 37 CFR 1.497(d) is **DISMISSED** without prejudice.

Applicant is hereby afforded **TWO (2) MONTHS** from the mail date of this decision to file any request for reconsideration. Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.497(d)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read 'DAP', is positioned above the printed name and title.

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